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November 8, 2004

ORIGINAL DOCKET FILE COPY ORIGINAL

Our File No. 21267-00100-63

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

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NOV - 8 2004

Federal Communications Commission
Office of Secretary


Re: Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Roswell, New Mexico)
MM Docket No. 04-361
RM-11074

Dear Ms. Dortch:

Transmitted herewith, on behalf of Rooney Moon Broadcasting, Inc., are original and four copies of its Comments and Counterproposal in the above-referenced matter.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,


John M. Pelkey

Enclosures

JMP:yg

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Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 04-361
Table of Allotments)	RM-11074
FM Broadcast Stations)	
(Roswell, New Mexico))	

To: Office of the Secretary

Attention: Assistant Chief, Audio Division
Media Bureau

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NOV - 8 2004

Federal Communications Commission
Office of Secretary

**Comments and Counterproposal
of Rooney Moon Broadcasting, Inc.**

By Petition for Rulemaking filed July 2, 2003, Dana J. Puopolo ("Puopolo"), requested that the Commission institute a rule making proceeding to amend Section 73.202(b) of the Commission's rules, the Table of FM Allotments, by allotting Channel 289C0 to Roswell, New Mexico, as that community's thirteenth local aural service (the "Puopolo Proposal"). In response, the Commission released a *Notice of Proposed Rulemaking* proposing the requested change to the Table of Allotments and soliciting the submission of comments by November 8, 2004. See *Notice of Proposed Rulemaking*, MM Docket Nos. 04-357, 04-358, 04-359, 04-360 and 04-361 (adopted September 15, 2004; released September 17, 2004) (the "NPRM").

Rooney Moon Broadcasting, Inc. ("RMC"), through counsel, hereby submits its Comments and Counterproposal in response to the *NPRM*. As will be shown below, allocation of Channel 290C1 to Portales, New Mexico, in conjunction with the allotment of Channel 237C0 to Roswell, New Mexico, results in an arrangement of allotments that better serves the public interest than the proposal put forth in the *NPRM*. As a result, the counterproposal being put forth by RMC (the "RMC Counterproposal") should be adopted in lieu of the Puopolo Proposal.

I. Background – RMC's Upgrade Application for KSEL.

RMC is the licensee of KSEL-FM, Portales, New Mexico. KSEL-FM is licensed to operate on Channel 237 as a Class A station. Channel 237A is currently allocated to Portales. On April 26, 2004, RMC filed a one-step application whereby it sought authority to operate on Channel 290 as a Class C1 station.¹

II. The Conflict between RMC's One-Step Application and the Puopolo Proposal can be Easily Resolved.

The Puopolo Proposal to allot Channel 289CO to Roswell conflicts with RMC's application to construct facilities on Channel 290C1 at Portales. This conflict was explicitly recognized by the Commission in the *NPRM*. See *NPRM* at 4.² Because of this conflict, adoption of the Puopolo Proposal would prevent KSEL-FM, which is the sole

¹ Use of the one-step application procedure was appropriate inasmuch as Channel 290 is 53 channels removed from Channel 237.

² In its instruction to the Consumer and Governmental Affairs Bureau, the *NPRM* refers to the *NPRM* as an *Order to Show Cause*. This reference appears to be in error. The *NPRM* does not include an order to show

commercial FM station allocated to Portales, from upgrading its facilities to Class C1 status. Puopolo's desire to establish a new C0 facility at Roswell can easily be reconciled with RMC's desire to construct new C1 facilities at Portales, however, simply through substituting Channel 290C1 for 237A at Portales, modifying the KSEL-FM authorization to specify operation on Channel 290C1,³ and then allocating Channel 237C0 to Roswell.

Adopting the counterproposal hereby being put forth by RMC better serves the public interest than does the Puopolo Proposal. If adopted, the Puopolo Proposal would allow the creation of new Class C0 facilities that, from the proposed reference site, would serve 73,588 persons. By contrast, allocation of Channel 237C0, rather than 289C0, to Roswell would permit the C0 facility to serve 81,451 persons. That is, the Channel 237C0 facility would serve 7,863 more persons than the Channel 289C0 facility, a differential of 10.7%. Similarly, adoption of the Puopolo Proposal would prevent KSEL-FM from upgrading, with the result that KSEL-FM would be precluded from providing additional service, whereas allocating Channel 237C0 to Roswell as proposed by RMC would allow the allocation of Channel 290C1 to Portales and the upgrading of the KSEL-FM facilities from Class A to Class C1 status. As a Class A station, KSEL-FM can serve only 27,553 persons from its licensed facilities. As a Class C1 facility, however, KSEL-FM would be able to serve 69,753 people. Thus, the proposed channel upgrade would yield a 253% increase in the population served by KSEL-FM.

cause and the Commission's ECFS does not list an *Order to Show Cause* as having been issued in this docket. In point of fact, no *Order to Show Cause* has been received by counsel for RMC.

³ Because the proposed allocation is on KSEL-FM's IF channel, Commission action to modify KSEL-FM's authorization to specify operation on that channel is appropriate. See 47 CFR §1.420(g)(3).

In summary, adoption of the Puopolo Proposal results in the creation of a single Class C0 station that would serve 73,588 people, whereas the adoption of the RMC Counterproposal results in the creation of one Class C0 facility that would serve 81,451 people and one Class C1 facility that would serve an additional 42,200 people that would be deprived of service if KSEL-FM were forced to continue to operate as a Class A station. Thus, the RMC Counterproposal would result in service to 50,063, or 168%, more people than the Puopolo Proposal.

Because RMC's Counterproposal would result in service being provided to significantly more people than would be the case under the Puopolo Proposal, the adoption of the RMC Counterproposal would better serve the Commission's allotment priorities than would adoption of the Puopolo Proposal.⁴

III. RMC's Counterproposal is Consistent with the Commission's Rules.

As is demonstrated in the attached engineering statement prepared by Wheeler Broadcast Consulting, the allocation of Channel 237C0 to Roswell, New Mexico, and the allocation of Channel 290C1 to Portales, New Mexico, can be accomplished in full compliance with the spacing and coverage requirements established in the Commission's rules.⁵

⁴ As the Commission explained in *Revision of FM Assignment Policies and Procedures*, the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). 90 FCCd 88, 91 (1982). Differences in coverage would fall under priority "4."

IV. RMC's Commitments

RMC hereby states its intention to continue to prosecute its modification application for KSEL-FM to specify operation on Channel 290C1 if that channel is allotted to Portales and, if authorized, to build the station promptly. In addition, RMC hereby commits to file an application requesting authority to construct a new FM station on Channel 237C0 at Roswell, New Mexico, if that channel is allotted and, if authorized, to build that station promptly.

V. Conclusion

In summary, the RMC Counterproposal would better serve the public interest than the Puopolo Proposal. The RMC Counterproposal would serve 7,863 more people from its proposed C0 facilities in Roswell than the C0 facilities proposed by Puopolo would serve and the RMC Counterproposal would allow the citizens of Portales to receive upgraded C1 service from its sole allocation, whereas the Puopolo would deny such upgraded service to Portales. That upgrade to Class C1 status would yield a 253% increase in the population served by KSEL-FM. These facts demonstrate that the grant of RMC's Counterproposal better serves the public interest than the Puopolo Proposal does. Accordingly, RMC respectfully requests that the KSEL-FM authorization be modified to


⁵ As is also demonstrated in the attached engineering statement, the present KSEL-FM 60 dBu contour is wholly encompassed within the 60 dBu contour achieved with the proposed Class C1 facilities -- with the result that there is no area that would lose service if the RMC Counterproposal were adopted.

specify operation on Channel 290C1 and that the FM Table of Allotments be amended as follows:

City	Present Allotment	Proposed Allotment
Roswell, NM	235C, 246C1, 258A, 263C1, 284C2, 293C1	235C, 237C0, 246C1, 258A, 263C1, 284C2, 293C1
Portales, NM	237A	290C1

Respectfully submitted,

Rooney Moon Broadcasting, Inc.

By: 
/ John M. Pelkey
/ Its Attorney

Garvey, Schubert Barer
5th Floor, 1000 Potomac Street, N.W.
Washington, DC 20007
202/965-7880

Date: November 8, 2004



WHEELER BROADCAST CONSULTING

Comments & Counterproposal

RM-11074

MB Docket number 04-361

Rooney Moon Broadcasting, Inc.
Roswell, NM and Portales, NM

This consultant has been retained by Rooney Moon Broadcasting, Inc. (Rooney Moon) for the purpose of preparing technical support to its comments and counterproposal in the above captioned rule making proceeding. Rooney Moon has a pending application, BPH-20040426 AAJ, which seeks to upgrade its radio station KSEL from a Class A operation on Channel 237 to a Class C1 operation on Channel 290¹. The KSEL-FM upgrade proposal is mutually exclusive with Channel 289 C0 at Roswell, NM as sought in RM-11074.

The KSEL-FM Class C1 Upgrade does not preclude a new Class C0 service at Roswell, NM. A search of the Commission's FM database reveals that, if the KSEL-FM Channel 290 C1 upgrade is granted, Channel 237 C0 becomes available for use at Roswell, NM. Suitable allocation reference coordinates for Channel 237C0 are 33° 29' 23" N by 104° 48' 59" W. This point is located on ranch land which is suitable for use as an FM transmitter location. A copy of the FM spacing study is included in this report as Exhibit 1.

The Channel 237 C0 allocation reference point is 30.17 km distant from the reference coordinates for Roswell, NM and the entire community of Roswell is contained within the 59.0 km, Class C0, reference arc. Exhibit 2 of this report is a digitally generated Marplot map which shows the 70 dBu and 60 dBu reference circles as well as the city limits of Roswell. Population studies were performed for the Channel 289 C0 operation proposed in RM-11074 as well as the alternate Channel 237C0 allocation proposed herein and we find that the proposed alternate channel serves an additional 7,863 persons, an increase of 10.7% over the 73,588 persons served by the Channel 289 operation.

¹ BPH-20040426 AAJ is a one step upgrade application. The KSEL-FM Channel 290 C1 operation is mutually exclusive with the licensed KSEL-FM on Channel 237 A as Channel 290 is 53 channels removed from Channel 237.

KSEL Allocation Considerations

The KSEL-FM allocation point proposed in BPH-20040426 AAJ is the same as the proposed transmitter site. That point is 6.25 km from Portales which is well within the 50 km 70 dBu reference distance associated with a Class C1 radio station. The entire community of Portales, NM is contained well within the 70 dBu reference contour as well as the actual 70 dBu contour proposed in the application. There is no area which would lose service from KSEL-FM as a result of the proposed KSEL-FM upgrade as the proposed 60 dBu contour of the Channel 290 C1 operation completely encompasses the 60 dBu contour of the licensed Channel 237 A operation. The total area served by the proposed KSEL-FM Channel 290 C1 operation is 11,449.8 km² which represents a 498.6% increase from the 2,296.2 km² served by the licensed KSEL-FM operation. The population served by the proposed Channel 290 C1 operation is 69,753 persons which is a 253% increase from the 27,553 persons served by the licensed KSEL-FM operation. Exhibit 3 of this report is a digitally generated map which demonstrates the lack of any loss area in association with the KSEL-FM upgrade and Exhibit 4 is an updated spacing study which demonstrates that the proposed KSEL-FM, Channel 290 C1 operation is fully spaced to other radio stations save the Channel 289 C0 operation at Roswell, NM.

Conclusion

As shown above, a new Class C0 service can be allocated to the Community of Roswell, NM and an upgraded service can be allocated in Portales, NM. As such the public interest is clearly served by granting BPH-20040426 AAJ, thus changing the KSEL-FM allocation from Channel 237 A to Channel 290 C1, and allocating Channel 237 C0 at Roswell, NM.

Community	Present	Proposed in RM-11074	Rooney Moon Counterproposal
Roswell, NM	235C, 246C1, 258A, 263C1, 284C2, 293C1	235C, 246C1, 258A, 263C1, 284C2, 289C0, 293C1	235C, 237C0, 246C1, 258A, 263C1, 284C2, 293C1
Portales, NM	237A	237A	290C1

Certification

All information in this report and its associated exhibits is true and accurate to the best of my belief. Having had numerous matters before the Commission, my qualifications are a matter of record.

November 8, 2004

Date

R. Lee Wheeler

R. Lee Wheeler

Wheeler Broadcast Consulting
3718 W. 52nd Terrace - Shawnee Mission KS 66205

Exhibit 1

Proposed Alternate Channel
Roswell NM

REFERENCE		CLASS = C0	DISPLAY DATES
33 29 53 N			DATA 10-06-04
104 48 59 W	Current	Spacings	SEARCH 11-01-04
----- Channel 237 - 95.3 MHz -----			

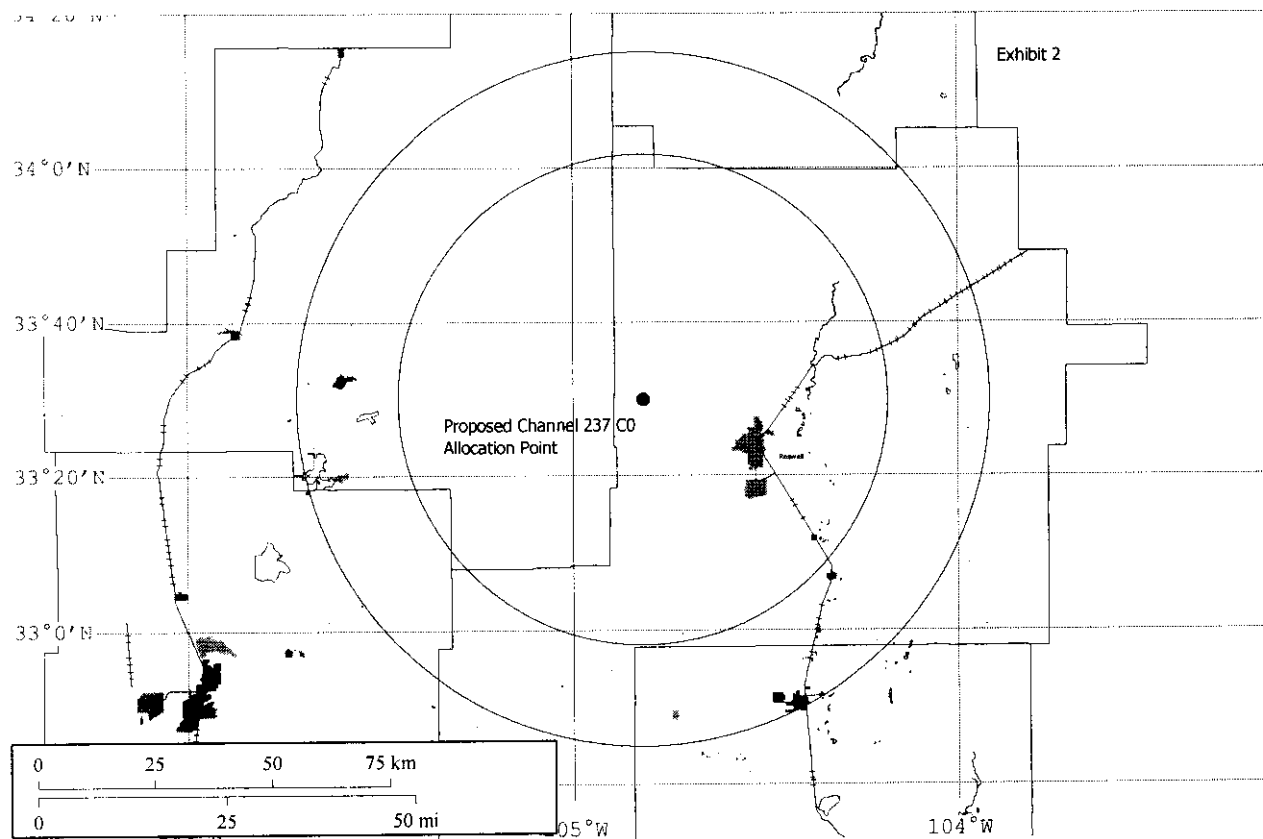
Call	Channel	Location	Power	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.				HAAT		
KSELF	LIC 237A	Portales	NM	158.47	60.2	215.0	-56.53
34 11 51	103 19 24	CX	6.000 kW		91 M		
		Rooney Moon Broadcasting,	BMLH20020816AAG				

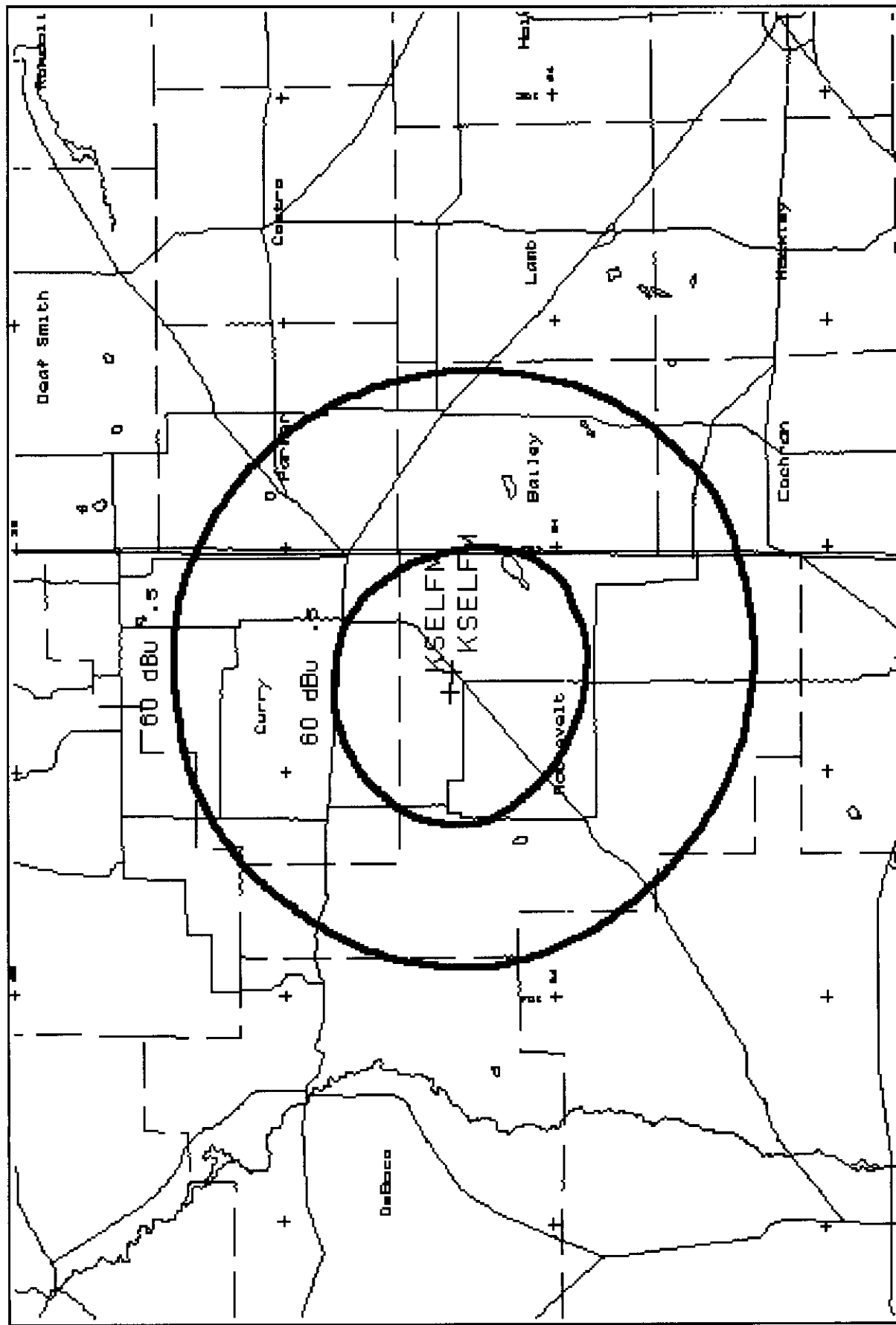
*To Channel 290 C0 per BPH-20040426 AAJ

KBIMFM	LIC 235C	Roswell	NM	105.00	117.7	105.0	0.00
33 03 20	103 49 12	CN	100.000 kW		573 M		
		King Broadcasting Company	BMLH19831221AF				
KLAQ	LIC 238C	El Paso	TX	245.01	219.9	220.0	25.01
31 47 47	106 28 55	CY	100.000 kW		424 M		
		Regent Licensee Of El Paso	BLH7759				
RADD	ADD 240C2	Alamogordo	NM	126.53	233.6	89.0	37.53
32 49 04	105 54 19		50.000 kW		150 M		
KSYU	LIC 236C1	Corrales	NM	250.98	314.6	196.0	54.98
35 04 04	106 46 46	CN	100.000 kW		132 M		
		Citicasters Licenses, Inc.	BLH19981014KB				
ALLO	USE 238C1	Wolfforth	TX	253.68	87.9	196.0	57.68
33 33 00	102 05 11		100.000 kW		299 M		
			RM10340				
ALLO	236	Balderas	CH	285.38	194.8	215.0	70.38
31 00 49	105 34 45		50.000 kW		150 M		
KAIQ	LIC 238C3	Wolfforth	TX	234.62	77.6	163.0	71.62
33 55 30	102 20 15	C	7.000 kW		33 M		
		Littlefield Broadcasting,	BLH19990518KD				



MARPLOT





Scale in km



KSELFM 290C1 100kW

0 10 20 30 40 50 60 70

N. Lat. 34 11 34

W. Lng. 103 16 44

EXHIBIT 3

LEE WHEELER - 11/04

Proposed KSEL-FM Operation
Portales NM

REFERENCE	CLASS = C1	DISPLAY DATES
34 11 34 N	Current Spacings	DATA 10-06-04
103 16 44 W		SEARCH 11-08-04

----- Channel 290 - 105.9 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Power	HAAT			
KSELFM APP 290C1	Portales	NM	0.00	0.0	245.0	-245.00
34 11 51	103 19 24	CX 100.000 kW	165 M			
Rooney Moon Broadcasting, BPH20040426AAJ						
RADD ADD 289C0	Roswell	NM	135.42	236.8	196.0	-60.58
33 31 12	104 30 00	100.000 kW	450 M			
RM11074						
KSELFM LIC 237A	Portales	NM	4.13	277.3	22.0	-17.87
34 11 51	103 19 24	CX 6.000 kW	91 M			
Rooney Moon Broadcasting, BMLH20020816AAG						
KAEZ LIC 289C2	Amarillo	TX	179.12	46.5	158.0	21.12
35 17 33	101 50 48	C 43.000 kW	160 M			
Kxoj, Inc. BLH20000925AAV						
KPANFM LIC 292C2	Hereford	TX	102.55	49.2	79.0	23.55
34 47 33	102 25 45	CN 30.000 kW	67 M			
Kpan Broadcasters BLH19980930KA						
KLVTFM CP 287C3	Levelland	TX	106.09	129.6	76.0	30.09
33 34 54	102 23 48	NCX 25.000 kW	91 M			
Paul R. Beane BPH20010301ABI						
KLVTFM LIC 288A	Levelland	TX	106.09	129.6	75.0	31.09
33 34 54	102 23 48	CN 6.000 kW	91 M			
Paul R. Beane BMLH19960722KC						
KRBL LIC 289A	Idalou	TX	166.18	110.3	133.0	33.18
33 39 47	101 35 52	C 5.500 kW	100 M			
Triumph Communications, In BLH19960111KH						
KFLPFM LIC 291C3	Floydada	TX	179.38	97.5	144.0	35.38
33 58 07	101 21 15	NCX 25.000 kW	71 M			
Anthony L. Ricketts BLH20010824AAK						
KLVTFM APP 287C2	Levelland	TX	115.79	127.8	79.0	36.79
33 33 01	102 17 33	ZCX 50.000 kW	114 M			
Paul R. Beane BPH20020709AAB						
KPZEFM LIC 291C2	Carlsbad	NM	194.96	203.0	158.0	36.96
32 34 22	104 05 32	C 39.000 kW	170 M			
Runnels Broadcasting Syste BLH19991214ABY						
ALLO RSV 291C3	Floydada	TX	181.93	97.2	144.0	37.93
33 58 22	101 19 32	25.000 kW	100 M			
RM10340						
KLVTFM APP 287C2	Levelland	TX	120.34	129.9	79.0	41.34
33 29 39	102 17 03	ZCX 50.000 kW	150 M			
Paul R. Beane BPH20020709AAB						
KKJW LIC 290C2	Stanton	TX	293.80	151.8	224.0	69.80
31 51 09	101 48 19	NCN 32.000 kW	134 M			
Unique Broadcasting, L.L.c BLH19970715KD						
KEJS LIC 293C2	Lubbock	TX	151.05	120.2	79.0	72.05
33 30 08	101 52 20	CN 34.000 kW	179 M			
Barton Broadcasting Compan BLH19920323KC						
KRZYFM LIC 290C	Santa Fe	NM	344.85	301.7	270.0	74.85
35 46 49	106 31 34	C 100.000 kW	585 M			
Entravision Holdings, Llc BLH19990203KB						

CERTIFICATE OF SERVICE

I, Yvette Graves, a secretary in the law firm of Garvey Schubert Barer, do hereby certify that on this 8th day of November, 2004, I caused copies of the foregoing "Comments and Counterproposal of Rooney Moon Broadcasting, Inc." to be mailed, first class postage prepaid, or hand delivered, addressed to the following persons:

*Victoria M. McCauley
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, CA 90405


Yvette Graves

*Hand-delivered